

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**ATLAS FREE WORKERS UNION
(AFWU) – PSSLU LOCAL,**
Petitioner,

-versus-

**G.R. No. L-51905
May 26, 1981**

**HON. CARMELO C. NORIEL, IN HIS
CAPACITY AS DIRECTOR OF LABOR
RELATIONS, MINISTRY OF LABOR,
AND ASSOCIATED LABOR UNIONS
(ALU),**

Respondents.

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DECISION

TEEHANKEE, J.:

This is a Petition for *Certiorari* and mandamus brought by petitioner union against respondent Director of Labor Relations to set aside respondent's order to remand the case to the Med-Arbiter or Office of Origin (Regional Office No. VII, Cebu City) for further hearing and reception of evidence instead of granting the petitioner union's petition filed since December 14, 1978 for the holding of a certification election.

The Court resolves to grant the petition in line with the liberal approach consistently adhered to by this Court in matters of certification election. The whole democratic process is geared towards the determination of representation, not only in government but in other sectors as well, by election. Thus, the Court has declared its commitment to the view that a certification election is crucial to the institution of collective bargaining, for it gives substance to the principle of majority rule as one of the basic concepts of a democratic policy.^[1]

The facts can be read from the decision dated September 28, 1979 of respondent Noriel. On December 14, 1978, petitioner Atlas Free Workers Union (AFWU) — PSSLU Local filed a petition for certification election to determine the bargaining representative of all the rank-and-file workers and employees of Atlas Consolidated Mining and Development Corporation numbering some 7,000 workers, and averring “that petitioner has been authorized and given consent to file the petition by no less than 30% of the workers and employees; that there has been no petition for certification election filed within the rank-and-file employer unit in said corporation by any labor organization 12 months prior to the filing of the petition; that there is no legal impediment to the petition as there is no legitimate labor organization with an exclusive bargaining agreement duly certified by the Ministry of Labor; that the Collective Bargaining Agreement between the Associated Labor Union (ALU) and Atlas Consolidated Mining and Development Corporation expires on December 15, 1979; that without being certified and authorized by the employees and workers in said corporation, the Associated Labor Union (ALU) has been assuming the bargaining representation since 1966 and since then there has been no certification election for more than 12 years now because the employees and workers have been threatened with dismissal by ALU in their endeavor to choose their own union to represent them, as in fact they had been dismissed when they petitioned for certification election in 1972; that the overwhelming majority, if not all, of the rank-and-file employees and workers clamor for the holding of a certification election in said corporation to be able to exercise their right to choose the union of their confidence to represent them; and that they have lost their trust and confidence in ALU.”^[2]

On January 18, 1979, respondent Associated Labor Unions (ALU), which had been assuming the bargaining representation of the employees since 1966, intervened and moved to dismiss the petition on the ground that there was an existing collective bargaining agreement between the company and the ALU and that the petition was not supported by 30% of the employees as required by the Labor Code alleging that of the 1,249 signatures appearing in the petition, the consent of the workers were either falsified, other signatures were those of persons long dead, others belonged to persons not members of the bargaining unit, others signed twice and still others were security guards and managerial employees. Petitioner opposed the motion to dismiss the petition maintaining that the petition had the written consent of clearly more than 30% of the workers of the company.

On March 23, 1979, the Med-Arbiter, after receiving the evidence of intervenor Associated Labor Union, issued an order arbitrarily (as found by respondent director in his decision) dismissing the petition for certification election for alleged failure to comply with the 30% subscription requirement of the workers of the company.

On March 30, 1979, petitioner appealed from the Order of the Med-Arbiter followed by a supplemental appeal dated April 5, 1979, on the grounds that “there is no truth in the allegation that some signatures supporting the petition had been fraudulently acquired or falsified, that it is not shown whether the number of those forged signatures, etc., would reduce the 30% subscription requirement” and maintained “that in any event, this matter can best be threshed out during the pre-election conference when the inclusion and exclusion process and other details concerning the mechanics of the election will be taken up.”^[3]

On September 28, 1979, respondent Noriel, instead of ruling on the holding of the certification election which he himself expressly found had been arbitrarily dismissed by the Med-Arbiter, issued the questioned order remanding the petition for certification election to the Med-Arbiter or office of origin for further hearing, as follows:

“Against the preceding guidelines, this Bureau finds the above Order wanting in some vital points.

In the first place, the findings of facts cannot be upheld for it clearly appears to have no reasonable support in evidence. There is no substantial evidence of record upon which the said findings of fact may be based. To be substantial, the evidence must first of all be credible. Here, the findings of the Med-Arbiter are based merely on the death certificates and unsworn lists submitted by one B.G. Cavada, Jr. who signed as Acting Personnel Relations Director of the Company. Specifically, as regards the death certificates, there was no showing that the persons referred to therein were the same persons alleged to have signed the petition. On the other hand, a cursory examination would instantly show that two of the death certificates referred to Leopoldo F. Bacalzo and Mateo V. Alisoso in contrast to the Leopoldo N. Bacalzo and Mateo Alisoso who signed the petition. With respect to the lists of alleged security guards, managerial employees and non-employees, respectively, the same were not sworn to, neither were they verified and identified in a hearing, nor was there any evidence of record to show its accuracy and truth. The said lists are self-serving and at most arbitrary. At the least, the Med-Arbiter should hear both parties on these issues and receive evidence thereon.

In the second place, the findings themselves contain mathematical errors and loose ends clearly indicative of the hasty manner in which the decision was rendered. Thus, the Med-Arbiter found that 147 were managerial employees based on the list submitted by the Acting Personnel Relations Director. A cursory count of the persons in said list however gives only 47 persons. Likewise, there was a finding that a number of persons denied having signed and supported the petition for certification election based on the list of employees together with their individual affidavits of denial. But a careful check of the alleged list against the supporting affidavits reveals a great disparity. Thus, while the list of persons who allegedly denied having signed the petition numbered about 796, the supporting individual affidavits numbered only about 125. Add to this is the charge that at the close of the proceedings before the Med-Arbiter, the said alleged individual affidavits were not

duly sworn to. Again, these facts, plus the obviously haphazard preparation of the lists and the affidavits should have placed the Med-Arbiter on guard and cautioned him into subjecting the same to verification and identification or at the least, against giving it due weight. In any case, a specific finding on this question is necessary, both as to its truth and the exact number thereof. Further hearing is thus, again, necessary.”

Reconsideration of the Order to remand the case for further hearing having been denied by public respondent, petitioner union filed the instant petition for certiorari and mandamus seeking to set aside the decision of September 28, 1979 and praying that respondent Noriel be ordered to exercise his power to grant the petition for certification election. Petitioner posed the issue as to whether or not respondent Director of Labor Relations acted with arbitrariness in evading or refusing to exercise, on appeal, the discretionary power vested in him to call a certification election.

Art. 257 of the present Labor Code, P.D. No. 442, states that “any petition for certification election filed by any legitimate labor organization shall be supported by the written consent of at least 30% of all the employees in the bargaining unit. Upon receipt and verification of such petition, it shall be mandatory for the Bureau to conduct a certification election for the purpose of determining the representative of the employees in the appropriate bargaining unit and certify the winner as the exclusive collective bargaining representative of all employees in the unit.” What is required is that the petition should be signed by at least 30% of all the employees in the bargaining unit. As long as the statutory requirement is complied with, the Director of Labor Relations has no choice but to call a certification election. In the words of the Chief Justice, “the language used is one of command. Once it has been verified that the petition for certification election has the support of at least 30% of the employees in the bargaining unit, it must be granted. The specific word used can yield no other meaning. It becomes under the circumstances, ‘mandatory’ for respondent Noriel as Director of the Bureau of Labor Relations to order such certification election precisely to ascertain which labor organization should be the exclusive bargaining representative.”^[4]

Respondent Noriel unqualifiedly held that the findings of facts of the Med-Arbiter in dismissing the petition could not be upheld for “it clearly appears to have no reasonable support in evidence” and because “the findings themselves contain mathematical errors and loose ends clearly indicative of the hasty manner in which the decision was rendered.” Under the circumstances and with respondent union having been already given the opportunity and dismally failed to establish the grounds for its opposition to the petition, to still remand the case to the Med-Arbiter for further hearing would constitute grave abuse of discretion in giving the oppositor-respondent more than what it was entitled to and unduly delaying the holding of the certification election to which the petitioners-workers were clearly entitled, especially considering that as of the filing of the petition in 1978, no such certification election had been held for twelve (12) years.

The 30% statutory requirement need not be established with absolute certainty. A prima facie showing of compliance with the 30% statutory requirement should suffice. As long as there is reasonable ground to believe that indeed a substantial section of the workers involved seek an election, the certification election should be ordered. In case of doubt, the best and logical way to determine which union really commands the allegiance and loyalty of the rank-and-file employees is through the holding of a properly supervised certification election. The Court has consistently ruled that “even conceding that the statutory requirement of 30% of the labor force asking for a certification election had not been strictly complied with, respondent Director is still empowered to order that it be held precisely for the purpose of ascertaining which of the contending labor organizations shall be the exclusive collective bargaining representative.”^[5]

The 30% statutory requirement is a mere technical requirement which should not be used to frustrate the will of the rank-and-file employees but should be interpreted to help determine the same. As the proceedings in the Bureau of Labor Relations are summary in character, technical rules of court practice, procedure and evidence do not have to be rigidly applied^[6] considering the nature of administrative bodies, the character of the duties they are required to perform, the purpose for which they are organized, and that the

persons who compose them are technical men but not necessarily trained law men.^[7]

Petitioner, in its appeal of March 30, 1979 from the arbitrary order of dismissal of its petition for certification election correctly pointed out that the issue as to whether some signatures supporting the petition have been “fraudulently acquired or falsified” and that the same would reduce the 30% subscription requirement “can best be threshed out during the pre-election conference when the inclusion and exclusion process and other details concerning the mechanics of the election will be taken up.” The Court in *Federacion Obrera de la Industria y Otros Trabajadores de Filipinas vs. Noriel*^[8] laid down the salutary rule that should be followed in case of alleged withdrawals and retractions that “the best forum for determining whether there were indeed retractions from some of the laborers is in the certification election itself wherein the workers can freely express their choice in a secret ballot.” Suffice it to say that the will of the rank-and-file employees should in every possible instance be determined by secret ballot rather than by administrative or quasi-judicial inquiry. Such representation and certification election cases are not to be taken as contentious litigations for suits but as mere investigations of a non-adversary, fact-finding character as to which of the competing unions represents the genuine choice of the workers to be their sole and exclusive collective bargaining representative with their employer.^[9]

The calling and holding of the certification election was thus practically mandatory, in view of public respondent’s own express finding that the dismissal was arbitrary. Granted that it lay within public respondent’s discretion to call for the certification election,^[10] the Court finds that public respondent did not properly utilize his authority in remanding the petition for certification to the office of origin for further hearing and delay rather than ordering that the certification election be conducted. For with the 30% requirement, it becomes mandatory to call the certification election, but even without compliance with such requirement, the respondent could in the exercise of his discretionary power order the holding of a certification election to determine the proper employees’ representative for purposes of collective bargaining.^[11] As stressed by the Chief Justice in another case: “In all other instances, the discretion, according to

the rulings of this Tribunal, ought to be ordinarily exercised in favor of a petition for certification.”^[12] The necessity and urgency for a certification election to be conducted immediately become more pronounced when it is considered that no such certification election has been conducted as of 1978 for more than twelve years in the company.^[13] Furthermore, respondent-oppositor had clearly failed to substantiate the grounds for its opposition to the certification election.

ACCORDINGLY, the petition is hereby granted and public respondent’s order remanding the petition to the Med-Arbiter for further hearing is set aside. Respondent Director of Labor Relations Noriel is ordered to call and direct the immediate holding of a certification election among the rank-and-file employees of Atlas Consolidated Mining Corporation. This decision is immediately executory.

Makasiar, Guerrero, De Castro^[*] and Melencio-Herrera, JJ., concur.

De Castro, J., was designated to sit with the First Division. Fernandez, J., is on official leave.

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- [1] National Mines and Allied Workers Union vs. Luna, 83 SCRA 610, per Fernando, C.J.
- [2] Rollo, p. 23; italics supplied.
- [3] Rollo, p. 24.
- [4] Federation of Free Workers vs. Noriel, 86 SCRA 132; Benguet Exploration Miner’s Union vs. Noriel, 76 SCRA 107.
- [5] National Mines and Allied Workers Union vs. Luna, 83 SCRA 610, per Fernando, C.J.
- [6] Antipolo Highway Lines, Inc. vs. Inciong, 64 SCRA 441.
- [7] Asprec vs. Itchon, et al., 16 SCRA 921.
- [8] 72 SCRA 24; see National Mines and Allied Workers Union vs. Luna, supra.
- [9] LVN Pictures, Inc. vs. Phil. Musicians Guild, 110 Phil. 725; Federation of Free Workers vs. Paredes, 54 SCRA 76 (1973); Phil. Communications, Electronics and Electricity Workers Federation vs. CIR, 56 SCRA 480.
- [10] Kapisanan ng mga Manggagawa sa La Suerte-FOITAF vs. Noriel, 27 SCRA 414.
- [11] Kapisanan ng mga Manggagawa sa La Suerte-FOITAF vs. Carmelo Noriel, ibid; Scout Ramon V. Albano Memorial College vs. Noriel, 85 SCRA 494.
- [12] National Mines and Allied Workers Union vs. Luna, supra.

- [13] Confederation of Citizens Labor Unions, et al. vs. NLRC, 60 SCRA 450.
[*] Chairman of the First Division.

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